

\*\*\*ATTORNEY-CLIENT PRIVILEGE\*\*\*

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1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

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4 SPORTS SHINKO (USA) CO., LTD., a Delaware  
5 Corporation; SPORTS SHINKO (MILILANI)  
6 CO., LTD., a Hawaii corporation, et al.,  
7 Plaintiff,

8 vs. Case No. 02-1-2766-11 (EEH)

9 RESORT MANAGEMENT SERVICES

10 (HAWAII), INC., a Hawaii corporation,

11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.

12 Defendants.  
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14  
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume II)

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18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &  
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,  
20 Hawaii 96813, commencing at 9:04 a.m., Wednesday, April  
21 20, 2005, pursuant to Notice.

22  
23 BEFORE: BARBARA ACOBA, CSR No. 412, RPR

24 Notary Public, State of Hawaii

25 **EXHIBIT** 4

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1 APPEARANCES:

2 For Plaintiff: GLENN MELCHINGER, Esq.  
3 ALSTON HUNT FLOYD & ING  
4 ASB Tower  
5 1001 Bishop St., 18th Floor  
6 Honolulu, Hawaii 96813  
7

8 For Defendant SATOSHI KINOSHITA:

9 JOHN KOMEIJI, Esq.  
10 WATANABE ING KAWASHIMA & KOMEIJI  
11 First Hawaiian Center  
12 999 Bishop St., 23rd Floor  
13 Honolulu, Hawaii 96813  
14  
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16 Also Present: STEVEN SILVER - Interpreter  
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1 properties of which we had no plans to sell.

2 Q. For all six properties, I think for Diamond  
3 Head Beach Hotel, Queen Kapiolani, Ocean Resort and then  
4 the three golf courses, do you remember what the total  
5 for the termination fees was if, for example, you had to  
6 pay them all, or Sports Shinko had to pay them all, do  
7 you remember the grand total?

8 A. I believe it was either 3.5 million or  
9 4.5 million.

10 Q. I think it's 3.5. I think that's right. So  
11 Mr. Fukuda when he said he was going to, if the other  
12 listed properties were sold, move those termination fees  
13 to Mililani and Queen Kapiolani, what he meant by that,  
14 as you understood it, was that that 3.5 million in  
15 termination fees would be on only those two properties  
16 or shifted into those two agreements with RMS; is that  
17 right?

18 A. Well, I suppose so, however, looking at the big  
19 picture, this was all hypothetical and was my  
20 understanding that no matter what anybody else said, it  
21 would ultimately be the president who would make the  
22 call.

23 Q. As a hypothetical, even as a hypothetical, did  
24 you think that seemed reasonable at that time to shift  
25 all the termination fees for the other contracts to just

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1 A. I have. Yes.

2 Q. Okay. It appears to be a request to move the  
3 closing date to the 25th; is that what this is, sent to  
4 Mr. Hamasaki, Peter Hamasaki, from you?

5 A. Yes.

6 Q. Do you remember why you sent this to  
7 Mr. Hamasaki?

8 A. I do.

9 Q. Could you tell me why.

10 A. Because I was instructed to do so by the  
11 president over the telephone.

12 Q. Did he tell you anything about why the closing  
13 date needed to be moved to the 25th?

14 A. What I recall was that I was told that the  
15 management on the Japan side was in a real bind and the  
16 president wanted us to hurry up and send the sales  
17 proceeds over to Japan.

18 Q. Okay. Did he explain why there was a need to  
19 hurry? I'm sorry, let me clarify the question.

20 Did the president explain to you why there was  
21 a need to accelerate the closing date, other than that?

22 A. Beginning around November the year 2001, the  
23 company on the Japan side was in a real pinch. They  
24 were short on funds and in specific terms, for example,  
25 cash flow was so bad that Sports Shinko in Japan was not

1 even able to make the interest payments that it had  
2 agreed to make with the some 50 financial institutions,  
3 including RCC, that the Japan Sports Shinko company had  
4 borrowed money from. And so I, beginning in November,  
5 had been told constantly that we needed to hurry up and  
6 make the sale and send the proceeds of the sale to  
7 Japan. We ended up -- this ended up spilling over into  
8 the next year, into 2002, and by then the company was in  
9 a real, real bind, and I was told pretty much on a daily  
10 basis to expedite this, and I received the instructions  
11 directly by telephone -- by telephone directly.

12 Q. Just to clarify, that was directly from the  
13 president by telephone?

14 A. That's correct.

15 Q. Was the closing date, then, actually changed to  
16 the 25th from the 28th; do you recall?

17 A. I don't recall.

18 Q. Do you recall at some point hearing about, from  
19 the president, a meeting that he had had with any of the  
20 lenders or RCC in early January of 2001?

21 MR. KOMEIJI: Same objection about relevancy.

22 MR. MELCHINGER: I'm sorry, not 2001. 2002.

23 MR. KOMEIJI: Same objection as relevancy. Not  
24 reasonably calculated to lead to discovery of admissible  
25 evidence.

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C E R T I F I C A T E

STATE OF HAWAII )

CITY AND COUNTY OF HONOLULU )

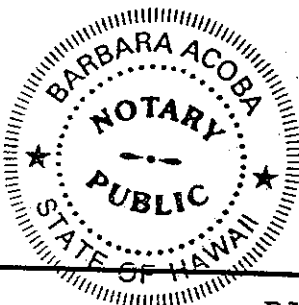
I, BARBARA ACOBA, Certified Shorthand Reporter and Notary Public, State of Hawaii, do hereby certify:

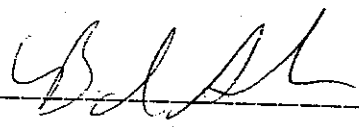
That on Wednesday, April 20, 2005, at 9:04 a.m., appeared before me SATOSHI KINOSHITA, the witness whose deposition is contained herein; that prior to being examined he was by me duly sworn;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

Dated this 30th day of April, 2005, in Honolulu, Hawaii.



  
BARBARA ACOBA, CSR NO. 412

Notary Public, State of Hawaii

My Commission Exp: 10-22-2008

RALPH ROSENBERG COURT REPORTERS  
Honolulu, Hawaii (808) 524-2090